Supreme Court, U.S.
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No. 91-1188

In The

Supreme Court of the United States

October Term, 1991

JAMES ROWLAND, ET AL.,

Petitioner,

v.

CALIFORNIA MEN'S COLONY, UNIT II
MEN'S ADVISORY COUNCIL,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Should this Court review a finding that an organization may sue *in forma pauperis* under an amended version of 28 U.S.C. section 1915(a), where this issue of statutory interpretation has reached the courts of appeals only twice in the thirty-two-years since the statute was amended?

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STATEMENT OF THE CASE

Respondent adopts Petitioner's Statement of the Case and Statement of Facts.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Question Presented For Review Arises So Infrequently That It Does Not Present A Special Or Important Issue For Review.

The statute that governs *in forma pauperis* proceedings is 28 U.S.C. section 1915. In 1959, section 1915(a) was amended to provide that a "person" may proceed *in forma pauperis*. The issue in the present case is whether associations are "persons" within the meaning of section 1915(a). The court of appeals ruled that associations are "persons" because 1 U.S.C. section 1 defines the word "person" to include associations.

In the more than thirty years since section 1915(a) was amended to allow a "person" to proceed *in forma pauperis*, only two federal courts of appeals have squarely considered whether a non-natural entity can be a "person" under that statute. *See California Men's Colony, Unit II, Men's Advisory Council v. Rowland*, 939 F.2d 854 (9th Cir. 1991)[hereinafter *Men's Advisory Council*]; *FDM Manufacturing Co., Inc. v. Scottsdale Insurance Co.*, 855 F.2d 213 (5th. Cir 1988) (per curiam).[1] Furthermore, since 1959,

[1] Petitioner implies that the Court of Appeals for the District of Columbia Circuit has also ruled on this question. While Chief Judge Bazelon argued in dissent in *S.O.U.P., Inc. v.*

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only five district courts have considered this issue.[2] This Court's rules provide that "review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are *special* and *important* reasons therefor." Supreme Court Rule 10.1 (emphasis added). The infrequency with which this issue arises suggests that the issue is neither special nor important. This Court should not review this case.

Moreover, contrary to Petitioner's claims, courts are fully capable of determining on a case-by-case basis when an association is legitimately indigent. The court of appeals determined that, based on the peculiar facts of this case, the Men's Advisory Council was indigent; the court properly declined to set forth some general rule.[3]

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FTC, 449 F.2d 1142, 1143 (D.C. Cir. 1971), that section 1915 should be read to include corporations, the majority of the court did not consider the question. In fact, the court assumed *arguendo* that a corporation could sue *in forma pauperis* under section 1915(a). *Id.* at 1142.

[2] *See Honolulu Lumber Co. v. American Factors, Ltd.*, 265 F.Supp. 578 (D. Hawaii 1966); *River Valley, Inc. v. Dubuque County*, 63 F.R.D. 123 (N.D.Iowa 1974); *Harlem River Consumers Cooperative, Inc. v. Associated Grocers of Harlem, Inc.*, 71 F.R.D. 93 (S.D.N.Y. 1976); *Move Organization v. United States Department of Justice*, 555 F.Supp. 684 (E.D. Pa. 1983); *Sears, Roebuck and Co. v. Charles W. Sears Real Estate, Inc.*, 686 F.Supp. 385 (N.D.N.Y. 1988).

[3] The facts of this case are truly unique. The Men's Advisory Council was created by an order of the Warden and is prohibited by that order from collecting funds or engaging in any revenue generating activities. Thus, the court of appeals

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Similarly, other courts that have considered this issue have easily distinguished between those organizations that are genuinely indigent and those that have been created as some sort of subterfuge to avoid the costs of litigation. In *S.O.U.P.*, the majority concluded that "assuming arguendo that a corporation may proceed in forma pauperis, we think that it would be inconsistent with the congressional intent to hold that this corporation should be allowed to proceed in that manner in view of the financial data submitted. . . . " 449 F.2d at 1142. Likewise, the few district courts that have applied section 1915(a) to corporations have not had any difficulty determining whether the corporation was indigent. *See River Valley*, 63 F.R.D. at 125 ("[c]onsidering the nature of plaintiff's operation and the persons served thereby, and in view of the fact that defendants have effectively cut off all previous sources of funds for plaintiff and directed that plaintiff spend no more money, it appears to the court that the plaintiff is truly in good faith without funds to maintain this action"); *Harlem River*, 71 F.R.D. at 96 (*in forma pauperis* status granted where the plaintiff was a non-profit, public-interest corporation that was not formed to avoid litigation costs and whose individual members would not benefit financially from the action).[4]

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found that the Council "conclusively established that it meets the statute's indigency requirements." *Men's Advisory Council*, 939 F.2d at 859.

[4] Some district courts have determined that section 1915(a) does not cover associations. Even those courts, however, do

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Cases involving organizations seeking *in forma pauperis* status under section 1915(a) are uncommon. Even when such cases arise, there is no difficulty determining when an organization is indigent. Consequently, the question presented for review is neither special nor important. This Court should not grant the Petition for Writ of Certiorari.

2. This Court Should Also Refrain From Granting Review Until Additional Courts Of Appeals Address The Issue.

Although the Men's Advisory Council acknowledges that two circuits are in conflict, the Council believes that if the issue ever becomes important, "further consideration of the substantive and procedural ramifications of the problem by other courts will enable [the Court] to deal with the issue more wisely at a later date." *McCray v. New York*, 461 U.S. 961, 962 (1983) (opinion of Stevens, J., respecting the denial of certiorari).[5] *See also Gilliard v. Mississippi*, 464 U.S. 867, 869 (1983) (Marshall, J., dissenting from the denial of certiorari) ("my colleagues

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not indicate that they would be incapable of determining when an association is legitimately indigent. *See, e.g., Move Organization*, 555 F.Supp. at 692 ("[e]ven if plaintiff were a 'person,' the filed affidavits are insufficient to support forma pauperis status").

[5] Although Supreme Court Rule 10.1(a) indicates that a conflict between two circuits is a valid reason for granting a petition for writ of certiorari, the existence of such a conflict is not controlling and the rule does not fully measure the Court's discretion. Supreme Court Rule 10.1.

. . . believe that this Court should postpone consideration of the issue until more . . . federal circuits have experimented with substantive and procedural solutions to the problem").

The issue in this case need not be resolved at this time. "[E]xperience with conflicting interpretations of federal rules may help to illuminate an issue before it is finally resolved and thus may play a constructive role in the law making process. The doctrine of judicial restraint teaches us that patience in the judicial resolution of conflicts may sometimes produce the most desireable result." Stevens, *Some Thoughts On Judicial Restraint*, 66 Judicature 177, 183 (1982). Along these same lines, Justice Brennan has recognized that "there is already in place . . . a policy of letting tolerable conflicts go unaddressed until more than two courts of appeals have considered a question." Brennan, *Some Thought on the Supreme Court's Workload*, 66 Judicature 230, 233 (1983). The inconsistency between the Ninth and Fifth Circuits regarding the application of section 1915 to associations is such a "tolerable conflict." Hence, even if this Court somehow considers the issue in this case to be special and important, this Court should allow additional courts of appeals to consider the question before granting review.

3. The Court Of Appeals Followed Established Principles of Statutory Construction In Concluding That The Men's Advisory Council May Proceed *In Forma Pauperis* Under Section 1915(a).

The court of appeals properly ruled that the Men's Advisory Council could proceed *in forma pauperis*. The

court of appeals concluded that "the plain meaning of § 1915(a), when read in conjunction with 1 U.S.C. § 1, indicates that associations can proceed in forma pauperis if they meet the indigency requirements." *Men's Advisory Council*, 939 F.2d at 857 (footnote omitted). The court simply followed the plain language of the two statutes.

Section 1915(a) provides that "[a]ny court of the United States may authorize the commencement . . . of any suit . . . without prepayment of fees and costs . . . by a *person* who makes affidavit that he is unable to pay such costs. . . . " 28 U.S.C. § 1915(a) (emphasis added). Section 1 states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise – . . . the word[ ] "person" . . . include[s] . . . associations . . . as well as individuals. . . . " 1 U.S.C. § 1.[6] When read together, the plain meaning of the statutes is clear. Section 1915(a) allows associations to proceed *in forma pauperis*.

Petitioner offers no credible challenge to the plain meaning.[7] Petitioner instead claims that the legislative history surrounding the addition of the word "person" to section 1915(a) in 1959 "provides no basis for permitting

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[6] Section 1 was on the books in 1959 when Congress amended section 1915(a) to provide that a "person" could proceed *in forma pauperis*. Thus, "Congress may be assumed to have been aware of [1 U.S.C. § 1] at the time of the 1959 amendment to § 1915." *Men's Advisory Council*, 939 F.2d at 858 (quoting *Harlem River*, 71 F.R.D. at 97).

[7] Petitioner's attempt to interpret the word "person" in light of section 1983 is clearly improper. *See* Petition at 13-15. The language of 42 U.S.C. section 1983 is irrelevant to the interpretation of the word "person" in section 1915(a).

associations to proceed *in forma pauperis*." *See* Petition at 10. As the court of appeals determined, however, the legislative history is *silent* as to whether associations were to be covered by section 1915(a). *Men's Advisory Council*, 939 F.2d at 858. Canons of statutory construction say that where the meaning of a statute is plain, legislative history is irrelevant unless it contains clear evidence that Congress intended a different meaning. *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987). The court of appeals recognized this rule and concluded that "congressional silence does not constitute the type of compelling contrary evidence we must find before abandoning a statute's plain meaning." *Men's Advisory Council*, 939 F.2d at 858.[8]

The plain meaning of section 1915(a) allows associations to proceed *in forma pauperis*. The court of appeals properly declined the state's invitation to elevate an ambiguous legislative history over the plain language chosen by Congress.

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[8] The author of the Ninth Circuit opinion is Judge Charles E. Wiggins, who served as a member of Congress from 1967 to 1979. Presumably he is familiar with Congress' dependence on "dictionary statutes" (such as section 1) when drafting other laws.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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